IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1183 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVANBHAI P RATHOD - Appellant(s)

Versus

UNION OF INDIA & 1 - Defendant(s)

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Appearance :

MR JA ADESHRA for the appellant.
MR DIPAK A THAKER for the respondents.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 12/01/2006

ORAL JUDGMENT

1. By this appeal, the appellant challenges the judgment and decree passed by the learned Presiding Officer, Court No.13 of City Civil Court, Ahmedabad, in

Civil Suit No.2030 of 1979, on 27th February, 1981. The appellant was the plaintiff before the Trial Court, who preferred the suit against the defendants-present respondents for obtaining a declaration that the order of the defendants reverting the plaintiff from the post of Assistant Central Intelligence Officer Grade-II to the post of Security Assistant is illegal, ultra vires the service rules and without any authority of law. The plaintiff also sought a mandatory injunction directing the defendants to appoint the plaintiff on the post of Assistant Central Intelligence Officer Grade-II. The Trial Court, after considering rival side contentions and evidence on record, dismissed the suit, which has given rise to the present appeal.

2. In order to appreciate the contentions raised by the learned advocates for parties, it would be appropriate to record the facts of the case. According to the plaintiff, he came to be appointed to the post of Security Assistant, at Ahmedabad, on 21st February, 1972 in the department of Intelligence Bureau. By a communication dated 17th May, 1975, the appellant-plaintiff was offered the post of Assistant Central Intelligence Officer Grade-II (ACIO-II). He was also

informed that he would be required to undergo training and that the post which was offered was a temporary post. The appellant-plaintiff accepted the said offer and he was appointed to officiate as ACIO-II. Thereafter, he was sent for training at Shivpuri (Madhya Pradesh). After the conclusion of the training session at Shivpuri, he was deputed to the State of Gujarat and was required to report to S.P., Vadodara, for his practical police training for a period of nine weeks. On 26th March, 1976, he received a communication informing him that he was reverted to the post of Security Assistant, the post that he was earlier holding.

2.1 The said order was the order under challenge before the Trial Court. The order was assailed on the ground that it is an unreasoned and non-speaking order; that it is passed in violation of the principles of natural justice; and that the appellant has been meted out with discriminatory treatment. It is, therefore, the case of the appellant-plaintiff that the order is bad in law, null and void and, therefore, the defendant should be directed to permit the plaintiff to work as ACIO-II with all consequential benefits.

2.2 The defendants filed their written statement vide Ex.15. The case of the defendants is that the plaintiff was recommended for the post of ACIO-II as he was found to be qualified for the post in the written test. The post of ACIO-II, on which the plaintiff was appointed, was a temporary post. The appointment of the plaintiff was dependent on the prescribed periodical tests and final test to be held at Shivpuri and his performance during the training. The plaintiffs performance was found not upto the mark along with three other candidates and, therefore, they were discontinued from the said post of ACIO-II. However, since the plaintiff was formerly working as Security Assistant, he was reverted to that post instead of total termination of service.

2.3 The Trial Court, taking into consideration rival side contentions and evidence, found that the post of ACIO-II was not a promotional post; the plaintiff was appointed on a temporary post on temporary basis, subject to fulfilment of other conditions; and the plaintiff having failed to fulfil one of the conditions, namely, successfully undergoing the training, the order impugned in the suit was perfectly in order and, ultimately,

dismissed the suit.

3. Learned Advocate, Mr. Adeshra, appearing for the appellant assailed the judgment and decree and the order in question on the following grounds :-

(1) That the order of reversion is a non-speaking order and, therefore, it is null and void.

(2) While passing the reversion order, no hearing was given to the plaintiff and, therefore, principles of natural justice are violated.

(3) No departmental inquiry was held and no charges were levelled against the appellant before passing the order.

(4) That there was absence of material to assess the performance of the appellant.

(5) That the appellant is meted out with discriminatory treatment while quoting cases of Rambabu and Tarachand. It was indicated that these two persons were also served with similar orders but,

subsequently, they were permitted to undergo the training afresh and then continued in service.

Learned Advocate, Mr. Adeshra, therefore, submitted that the Trial Court has committed an error in not appreciating these aspects and the appeal may, therefore, be allowed.

4. The appeal is opposed to by learned Additional Central Government Standing Counsel, Mr. Thaker. He drew attention of this Court to the aspect that the post of ACIO-II is not a promotional post and the post which was offered to the appellant was a temporary post and was offered on temporary basis. The offer letter itself indicates that the services can be terminated without prior notice and without assigning reasons.

4.1 While dealing with the allegation as to discrimination, Mr. Thaker submitted that the two other candidates, namely, Rambabu and Tarachand, had preferred appeal/representation against the order within the stipulated permissible time limit and, considering the peculiar facts of the case, namely, Tarachand had fallen sick during the course of training, they were permitted

to undergo the training afresh. As compared to this, present appellant preferred such appeal beyond the permissible time limit, which was not condonable and, therefore, his appeal/representation came to be turned down. All these factors considered collectively, learned Advocate, Mr. Thaker, submitted that it cannot be said that the impugned order is without authority or null and void.

4.2 Mr. Thaker drew attention of this Court to certain provisions which indicate that delay caused in preferring departmental appeal and/or representation can only be condoned for a particular limit and it is not in dispute that the appellant had preferred such appeal beyond the stipulated condonable time limit. He, therefore, urged that the appeal may be dismissed.

5. This Court has taken into consideration rival side contentions. In order to appreciate the contentions, the first and foremost document which would be of relevance and importance would be the offer letter dated 3.5.1975. The relevant important extract of the said communication can be reproduced thus :-

"MEMORANDUM

The undersigned hereby offers Shri Rathod Bhavanbhai, a temporary post of Asstt. Central Intelligence Officer Grade-II (GENL) in this Bureau on a pay of Rs.425 in the scale of Rs.425-15-530-EB-15-560-20-600. The appointee will also be entitled to draw dearness and other allowances at the rates admissible under rules and orders governing the grant of such allowances in force from time to time, and subject to the conditions laid down therein. He will be required to undergo training at the place or places selected by the Director, Intelligence Bureau.

The terms of appointment are as follows :-

(i) The appointment is temporary. His permanent appointment to the post if and when it is made permanent, however will depend on various factors governing in such posts in force at the time, and will not confer on him the title to permanency from the date post is converted.

(ii) The appointment may be terminated at any time by a month's notice given by either side, viz. The appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration

of the stipulated period of notice by making payment the period of notice of the unexpired portion thereof. His services are liable to be terminated within a period of six months from the date of his appointment without any notice and without any reason being assigned....”

5.1 It is, thus, clear that this communication was offered to the appellant for being appointed on a temporary post of ACIO-II. It is also made clear in the very first term of appointment that the appointment is temporary and that his permanent appointment, if at all it is made, would be dependent on various factors. It is also clear from the offer letter that the appointment may be terminated at any time by a month's notice given by either side. It is also clear that the services are liable to be terminated within a period of six months from the date of appointment without any notice and without any reason being assigned. It is, thus, clear that the appointment to the post of ACIO-II was not a promotional appointment but a fresh appointment which was subject to certain conditions, including undergoing training satisfactorily.

5.2 The second relevant document is the impugned

office order which says that the appellant is reverted to the post of Security Assistant held by him prior to his appointment as ACIO-II with immediate effect. He should, on relief, report for duty to JDD, SIB, Ahmedabad. It is also clear from the communication that the order was to become effective immediately and no detailed reasons are given.

5.3 What is more important to note is that the order cannot be considered as an order by way of a punishment. The case of the defendants-respondents is that the plaintiff had failed to undergo the training satisfactorily and, therefore, he was not continued in service. There is no reason for not accepting this contention. The authorities, before them, had the record of the candidates and the other candidates similarly situated also came to be terminated/reverted from service. It, therefore, cannot be said that the order is by way of punishment or that it stinks with discrimination. When the appointment was on a temporary post made temporarily subject to certain conditions and when those conditions are not fulfilled, the respondents were justified in not continuing the appellant on the post of ACIO-II and reverting him to his original post.

5.4 Cases of Rambabu and Tarachand have been cited, but it is indicated that, after their termination, they preferred appeal within time whereas the appellant preferred appeal not within the time limit. Not only that, but he preferred appeal/representation after a lapse of time which cannot be condoned by the authority. Apart from that, even factually also, the case of the appellant cannot be considered at par with the other two for the reason that, they had been able to show that the unsatisfactory performance in training was because of physical ailment and, therefore, they were permitted to undergo training again and, therefore, the case of the appellant of being meted out with discriminatory treatment does not merit acceptance. These aspects have been considered by the learned Trial Judge.

5.5 As regards violation of natural justice, it may be noted that the order is not by way of punishment and, as held in **Gajendra Singh v. Union of India, (1973) 3 SCC 797**, Article 311 of the Constitution would not be attracted because it would affect a legitimate power of the authority to revert an employee.

6. To sum up, when it is found that the post of ACIO-II which was offered to the appellant was not a promotional post; that it was a temporary post and offered on a temporary basis; that it was terminable without assigning any reasons; that reversion was not by way of punishment but because of non-completion of training satisfactorily; and that the order was not discriminatory, this Court is of the view that the findings given by the learned Judge of the Trial Court are perfectly in order and call for no interference. The appeal merits dismissal and the same is dismissed. No costs.

[A. L. DAVE, J.]

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